THE CORPORATION JOURNAL

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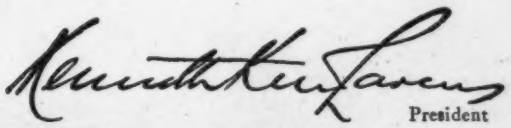
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

In order to comply with all statutory requirements in organizing a corporation many steps must be taken and those not familiar with the intricate details are often at a disadvantage. At times persons may do business under the guise of a corporation for years, only to find that in fact no corporation exists, because there has been "no colorable compliance with some of the essential statutory requirements." This, of course, makes those connected with the alleged corporation individually liable for debts and may involve them in considerable litigation. The Corporation Trust Company has in its files precedents covering every step necessary for complete incorporation; and these precedents are available at all times to members of the bar. An instance of serious injury arising from non-compliance with all statutory requirements is found in a recent decision by the United States Circuit Court of Appeals (First Circuit), reported on page 56 of this number of The Corporation Journal.



President

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

Florida Corporation Law

Attention is directed to the facilities of The Corporation Trust Company for assisting counsel in the organization of corporations under the laws of Florida or in the qualification of foreign corporations under the laws of that state. For the purpose of reviewing salient features of the present Florida Corporation Law the following data are reproduced from our records:

The tax for the organization of a Florida corporation is high but there is no annual franchise tax.

None of the incorporators or directors need be a resident of the State and directors need not be stockholders.

Stockholders' and directors' meetings may be held outside the State.

There is no limitation on the amount of authorized capital stock, but the amount of capital with which a corporation will begin business shall not be less than $500.

There is no limitation on amount of indebtedness.

It is not necessary to procure stockholders' consent for mortgage of corporate property.

Corporations have full power to hold stocks and bonds of other corporations and a corporation may purchase and hold shares of its own capital stock provided no such purchase is made except from surplus of assets over liabilities including capital.

Stock may be classified as desired. Any or all classes may be without par value.

Par value stock may be issued "for a consideration having a value in the judgment of the Board of Directors of the corporation, at least equivalent to the full par value of the stock so to be issued.

Non par value stock may be issued for such consideration as may be fixed by the charter, or in the absence of charter provision by the Board of Directors or stockholders.

Dividends may be paid in stock.

Directors may make by-laws, subject to those, if any, adopted by the stockholders.

An executive committee of two or more may be appointed.

Voting trusts, limited to not exceeding 10 years, are authorized by statute.

The name of a corporation must include "company" or "corporation" or such word, abbreviation, affix or prefix, as will clearly indicate that it is a corporation. There is no provision requiring the name to be displayed.

The stock book must be kept open daily, during at least three business hours, for inspection by any judgment creditor of the corporation, or by any person who shall have been for at least 6 months immediately preceding his demand a stockholder of record of not less than 1% of the outstanding shares, or by any person holding or thereunto in writing authorized by the holders of at least 5% of all the outstanding shares.

Corporations are not required as such to make any reports to state departments.

ORGANIZATION TAX:

On authorized par value stock of			
$125,000 or less	$2	per	$1,000
Over 125,000 and not over 1,000,000	50¢	"	"
" 1,000,000 and not over 2,000,000	25¢	"	"
" 2,000,000	10¢	"	"
On authorized shares without par value			
Not over 1,250 shares	20c	per	share
Over 1,250 and not over 10,000	5¢	"	"
" 10,000 and not over 20,000	1¢	"	"
" 20,000 1/10 of	1¢	"	"
Minimum tax $10			

Practically all businesses, occupations and professions are taxed by the State of Florida and municipalities have power to levy a municipal tax.

"The owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock; Provided, That such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. * * *" (Sec. 705, Rev. Gen. Stats. 1920.)

Domestic Corporations

Connecticut.

Contract of corporation to repurchase stock held ultra vires. This action is brought against the Reid Air Spring Company being based on a contract whereby the company sold 6 shares of its capital stock to a certain person agreeing to repurchase the shares should the purchaser desire to sell. The Supreme Court of Errors of Connecticut, in connection with the repurchase of the stock, cites the case of Martin Tire & Rubber Co. v. Kelley Tire & Rubber Co., 126 Atl. 697 (reported in The Corporation Journal, No. 135, March, 1925), holding a contract by a corporation to buy back its own stock as ultra vires as opposed to public policy. The court says that the statute provides two ways in which a corporation may acquire and hold its own stock, one to prevent loss upon a debt previously contracted and the other method after approval of stockholders owning three-fourths of its capital stock, at a meeting warned and held for that purpose. Pothier v. Reid Air Spring Co., 130 Atl. 383. David M. Reilly and Frank W. Daley, both of New Haven, for appellant. Thomas R. FitzSimmons and Benjamin F. Goldman, both of New Haven, for appellee.

Delaware.

Determination of quorum at stockholders meeting. In an action involving an alleged election of directors of the Sinaloa Exploration & Development Company the question presented involved a determination of whether or not a quorum of stockholders was present at the meeting. Under the by-laws a majority of the outstanding shares, or 4788, constituted a quorum for the purpose of electing directors. There was no call of the stockholders for the purpose of ascertaining the presence of a quorum and 4005 shares only were voted, or 783 shares short of the number necessary. It was contended, however, that more than the necessary number to constitute a quorum were present although some had not voted. The Court of Chancery of Delaware in holding that the directors had not been elected found that certain shares sought to be counted as present and not voting were held by a stockholder who

was present solely for the purpose of protesting against the legality of the meeting, taking the position at all times that the meeting was being illegally held. Under these circumstances no shares could be counted as present and represented by this stockholder. The court found that taking everything into consideration a quorum had not been present, saying that granting some of those present and not voting might be counted for quorum purposes, still a deficiency remained and it had not been established that sufficient shares for quorum purposes had been present. Leamy et al. v. Sinaloa Exploration & Development Co. et al., 130 Atl. 282. James H. Hughes, of Dover, for petitioners. Herbert H. Ward, of Ward, Gray & Ward of Wilmington, and Paul Jones, of New York City, for defendants.

Georgia.

New corporation held to be a continuance of old corporation. "Where, after one-half of the capital stock of a corporation, which belongs to one person, who owns the entire capital stock, is acquired by new stockholders, and all the new stockholders apply for articles of incorporation, and become incorporated for the same objects and purposes under a charter creating a new corporation having in effect the same name, which takes over the entire assets and business of the old corporation, as well as its stockholders, who become stockholders of the new corporation, and operate the new corporation in the same place and in the same manner in which the old corporation was operated, and becomes liable for the debts of the old corporation, the new corporation, by reason of such identity of name, objects, assets, and stockholders, is but a continuance of the old corporation, and the new corporation is liable for the debts and obligations of the old corporation." The Court of Appeals of Georgia further says that in a suit by the new corporation to recover the unpaid purchase money on a contract of sale, which contract arose out of an order sent the old corporation but was accepted and filled by the new, the purchaser could set off damages arising out of an alleged breach by the old corporation in failing to make deliveries under a contract of sale entered into between it and the purchaser. Johnson-Battle Lumber Co. v. Emanuel Lumber Co., 126 S. E. 861. Hill & Gibson, of Moultrie, for plaintiff in error. E. K. Wilcox, of Valdosta, for defendant in error.

Illinois.

Admission of corporate books and records as evidence. In an action involving the sale of corporate stock it was contended that the court erred in admitting certain books and documents of the company to impeach the verity of the statements to the secretary of state and in a circular as to the financial condition of the company. The Supreme Court of Illinois in holding that the books and documents had been properly admitted says that the vouchers, books and papers were part of the records of the company. If they did not speak the truth no one knew it better than the officers of the company; if they did speak the truth, and did impeach the statements made to the secretary of state and in the circular issued, they were competent for that purpose.

McRoberts v. Combination Fountain Co., 147 N. E. 785. Robert P. Vail, Stanley L. Pogue, and Edgar H. Allen, all of Decatur, for plaintiff in error. Wiley & Morey, of Decatur, for defendant in error.

Kentucky.

Transfer after death of stockholder of stock indorsed in blank. One McCormack, being the owner of 5 shares of stock of the Citizens' Bank of Waddy, and 3 shares of stock of the Citizens' Bank of Shelbyville, delivered the certificates assigned in blank to brokers in Louisville. The power of attorney authorizing transfer on the books of the company was also left blank. The brokers became indebted to a trust company and delivered the shares to it as collateral security. They did not pay the debt and became bankrupt and the trust company sold the stock and purchased it at the sale. The two banks refused to recognize the trust company as a stockholder and this action was brought to compel transfer. In the meantime, the stockholder died and his executrix entered the suit claiming the stock for his estate on the theory that McCormack had paid the brokers all he owed them, that he died before the blank in the power of attorney was filled out and that the power of attorney was vacated by his death. The Court of Appeals of Kentucky in allowing a transfer of the stock to the trust company says that from the nature of the transaction and the purpose of the instruments, such a power of attorney is not revoked by death of the maker. The court further says that it is immaterial how much McCormack owed the broker at his death. He put the paper in their hands in a form which authorized the broker to sell it or otherwise dispose of it and as between two innocent persons he must bear the loss who made the loss possible. Citizens Bank of Shelbyville et al. v. Mutual Trust & Deposit Co. Citizens Bank of Waddy et al. v. Same, 266 S. W. 875. E. B. Beard and Willis, Todd & Willis, all of Shelbyville, for appellants. Stotsenburg & Weathers, of New Albany, Ind., and Edwards, Ogden & Peak, of Louisville, for appellee.

Maine.

Corporation cannot be created in absence of colorable compliance with statutory requirements. One actively conducting business held individually liable to creditors. This action involves a petition in bankruptcy by creditors against certain persons doing business as Congress Square Men's Shop, Inc. It appeared that the alleged bankrupts undertook to organize a corporation under the laws of Maine, styling themselves the Congress Square Men's Shop, Inc.; that they signed written articles of agreement, signed and swore to a certificate of organization, subscribed for and had stock issued, adopted by-laws, and chose directors and officials; that they employed an attorney to effect the organization of the corporation, who was provided with money to pay the necessary filing and recording fees to the various officers where filing and recording was required; that the attorney filed the certificate of incorporation with the attorney general for approval and paid him his fees; that the attorney general approved and returned the certificate to the attorney, who failed to have it recorded in the

registry for the county in which the corporation was to do business, and to file a copy of it, with a certificate of the register thereon, with the secretary of state; that, instead of doing these things he sent the certificate by mail to one of the organizers, who, it appeared, did not receive it, and knew nothing about its not having been recorded, until some time in the late summer or fall of 1923. The United States Circuit Court of Appeals (First Circuit) in holding that no corporation had been organized says it is apparent that there was no colorable compliance with some of the essential statutory requirements, such as recording the certificate in the registry of deeds and filing a copy thereof with the secretary of state and paying the filing fee, for the parties, through their attorney, failed to do these things. The court further found that no partnership existed and that the person who had acted as president of the alleged corporation had actively conducted its business and had purchased the goods which formed the basis of the creditors' accounts, should at least be responsible for the debts created, as the corporate principal for whom he purported to act, did not exist. If a person, purporting to act as agent of a corporation which had no valid legal existence, makes contracts and does other acts as its agent, he becomes the principal, and is personally liable therefor. Baker et al. v. Bates-Street Shirt Co., et al., 6 F. (2nd) 854. Maurice E. Rosen, of Portland, for appellants. Raymond S. Oakes, of Portland (Oakes & Skillin, of Portland, on the brief), for appellees.

The above case brings forcibly to light the liability which may be encountered through the faulty incorporation of a company. Those interested in forming a corporation should be sure that all statutory requirements are complied with in order that personal liability for the debts of the attempted corporation may not arise.

Massachusetts.

Purchase in good faith of stock after name of transferee has been obliterated does not pass title. One Chaffee, being the owner of certain shares of stock of the Hamilton Woolen Company, specially indorsed the certificate to H. D. Howard & Co., and delivered the certificates, so indorsed, to some person representing himself to be a messenger of that company. Thereafter this special indorsement was erased by some unknown person and the stock was sold to the plaintiff in the present action. The certificates were presented in due course to the transfer agent, but before transfer could be effected a telegram was received from Chaffee placing a stop against the certificates and stating that the stock had been stolen. The purchaser now brings this action to prevent the disposal of the certificates and to require the transfer agent to transfer and deliver new certificates. The Supreme Judicial Court of Massachusetts in holding against the purchaser says that after Chaffee delivered the certificates to the messenger indorsed to H. D. Howard & Co., the title could pass only by the indorsement of that firm or by the assignment by it by a separate document together with the delivery of the certificates. No such indorsement or assignment was made. On the other hand it appears that after delivery by Chaffee

to the messenger, the indorsement to H. D. Howard & Co., was obliterated and thereafter the purchaser bought the certificates in good faith without any notice of the defect or infirmity of title. Even if there was no delivery to H. D. Howard & Co., the latter still appeared by the certificates to be the owner, and its indorsement was necessary to transfer title. The fraudulent alteration of the certificates by erasure of the special indorsements, gave no title to plaintiff in view of section 41 of the Uniform Stock Transfer Act, providing that the alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby. Place v. Chaffee et al., 146 N. E. 722. F. J. Good, of Boston, for appellant. A. S. Houghton, of Worcester, for appellees.

Michigan.

Distribution of assets upon dissolution. In an action brought by and on behalf of the preferred stockholders of the Eddy Paper Company, a dissolved corporation, to compel a distribution of the assets among them, the Supreme Court of Michigan says that the articles of incorporation being silent as to a distribution of the assets, the distribution must be made according to the applicable statute in force at the time of the incorporation and this statute (Section 9050, C. L. 1915) requires payment in full to holders of the preferred stock before the common stock may participate. It was contended however, that the board of directors and certain stockholders had passed resolutions providing that the assets after the sale of the property should be distributed among the preferred and common stockholders at a ratio of three to one and that the preferred stockholders were estopped from asserting their rights under the statute. The court in answer to this says that no notice of the meeting or of its purpose was given to them. The meeting was held in another county, and not at the usual meeting place and there is no evidence that any of the plaintiffs were present and voted at any of the meetings or had any knowledge of the action taken by the other stockholders. Maxwell et al. v. Eddy Paper Co. et al., 205 N. W. 111. Thomas J. Cavanaugh and David Anderson both of Paw Paw, for appellant Maxwell. Claude S. Carney, of Kalamazoo, for appellant Jessie Thompson. Edward H. Andrews, of Three Rivers, for appellee Leeta D. Eddy.

Minnesota.

Director held entitled to compensation for services performed as officer of corporation. The Supreme Court of Minnesota in a recent decision says that if a director of a corporation performs services for it as treasurer under circumstances indicating that it was the intention of the corporation and himself that he receive compensation, he can recover; and the same is true of services performed for the corporation outside of his duties as treasurer. The contract need not be shown by the corporate minutes, nor need it be in writing, or in express words. It is enough if the contract, which is a true contract based on agreement, can be implied or inferred from the facts. Jezeski v. Northeast Inv. Co., 203 N. W. 978. Elliott, Doll & Coursolle, of Minneapolis, for appellant. J. P. Kolesky and D. E. Labelle, both of Minneapolis, for respondent.

Missouri.

Payment of bonus or deferred salaries to directors and officers. Directors of a corporation voted a bonus of $50,000 out of net profits of $150,000. Most of this was paid to the directors as deferred salary payment. It was shown that the directors had served as officers at small salaries with the understanding that if the company became prosperous they would receive extra compensation, and this induced them to perform valuable services for the company outside the ordinary duties of their offices. A minority stockholder brought suit to compel the directors to restore to the corporate treasury the moneys paid out as bonus or deferred salaries. After the institution of this suit, the stockholders at a special meeting ratified the action of the board of directors and officers by votes of 1,536 shares of preferred stock and 3,248 shares of common stock as against the plaintiff's 217 shares of common stock. The Supreme Court of Missouri in upholding the payment found that the bonus was beneficial to the corporation and not in itself a fraud upon dissenting stockholders and held that the payment of a bonus may be legal or illegal according to the purposes and circumstances under which the same is authorized. In discussing this the court says: "Experience has demonstrated that the payment of a bonus works to the benefit of employer and employee alike, and, within reasonable bounds, is advantageous to stockholders of a corporation employing labor. Courts have recognized this and have given their sanction to the practice. * * * Courts will not substitute their judgment for that of the stockholders as to what is good business policy, or as to what is beneficial to the corporation, absent evidence of fraud upon minority stockholders." It was further held that the stockholders had full power to bind minority stockholders by their ratification at a stockholders meeting called for that purpose, even after suit was filed, since the action of the directors was not fraudulent, but was made for the benefit of the corporation; it was voidable at most, and could be ratified by the stockholders. Putnam v. Juvenal Shoe Corporation et al., 269 S. W. 593. McReynolds & McReynolds and John H. Flanigan, all of Carthage, for appellant. Lewis & Rice, of St. Louis, and Howard Gray, of Carthage, for respondents.

Pennsylvania.

Board of directors may sell property if sale does not interfere with corporate franchises or business. Resolutions held to satisfy statute of frauds. In an action involving the sale of land by a corporation the Supreme Court of Pennsylvania says that the board of directors of a business corporation unless restrained by charter or general laws have a common law right to sell such of its real and personal property as would not interfere with the exercise of its corporate franchises and business. In discussing the sale of real property and the satisfaction of the statute of frauds by resolutions passed by the two companies the court says that it give validity to the contract for sale of land there must be a sufficient written memorandum thereof to satisfy the statute and the written description of the property in the McKay company resolution, accepted by the Ice company describes

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it by abutting lands and an attached draft, while the resolution of each company expressly refers to a survey which gives a full and accurate description. As the resolutions refer to the survey it was competent to identify the latter by parol evidence. Separate papers may constitute the required written memorandum and here the resolutions and survey to which they refer are sufficient for that purpose. The minutes of the corporations containing the resolutions were fully attested by the respective secretaries, which was a sufficient signing to satisfy the statute. Where there is a sufficient memorandum in writing, a delivery thereof is not necessary to satisfy the statute; nor is it necessary for that purpose to show the delivery of a copy of the resolution adopted by and spread upon the minutes of the corporation. In the instant case the taking possession of the property by the vendee, with the consent of the vendor, without more constituted a sufficient acceptance of the contract. People's Trust Co. of Lancaster et al. v. Consumers' Ice & Coal Co. et al., 128 Atl. 723. Paul A. Mueller, J. R. Kinzer, John E. Malone and John M. Groff, all of Lancaster, for appellants. Charles L. Miller and John A. Coyle, both of Lancaster, for appellees.

West Virginia.

General manager employed for stated time properly dismissed by board of directors. Procedure of board in removing corporate officer. A person, employed by a corporation under a by-law providing for the appointment and employment of a general manager, "whose duty it shall be to look after and superintend the manufacturing operations of the company and, subject to such restrictions and limitations as the board may impose, to employ all assistants and labor necessary therefore, contract for compensation, and to discharge any persons so employed, and perform such other duties as may be required of him by the board," is an agent of such corporation, within the meaning of the statute and holds his place only during the pleasure of the board of directors, although such agent is employed for a certain term. The Supreme Court of Appeals of West Virginia in addition to the above statement says that corporate bodies, in proceedings taken for the removal of an officer, are not bound to act with strict regularity which obtains in judicial proceedings and the courts as a rule will limit themselves to inquiring whether they have acted within their powers, after giving notice to the accused and affording him opportunity to make his defense and whether they have exercised their powers fairly and in good faith. Further that a director of a corporation, who is present and participates in a directors meeting, is estopped to deny the legality of such meeting. State ex rel. Blackwood v. Brast et al., 127 S. E. 507. Wm. Beard and T. A. Brown, both of Parkersburg, for relator. Smith D. Turner and Marshall & Forrer, all of Parkersburg for respondents.

Foreign Corporations

Michigan.

Right of unqualified foreign corporation as to property upon bankruptcy of purchaser. May maintain petition for its reclamation. The Harmony Theatre Company, of Detroit, made a contract with Heywood-

Wakefield Company, an Illinois corporation, to manufacture for it and install in its theater a quantity of chairs. By the contract, title was to be reserved in the vendor until paid for. The chairs were installed and while a portion of the purchase price remained unpaid, the theatre company became bankrupt, and a receiver and later a trustee were appointed. The Illinois corporation did not obtain permission to do business in Michigan, and the court assumed for the purposes of this opinion, as do both counsel, that the contract contemplated "doing business" in Michigan and was therefore invalid. The United States Circuit Court of Appeals (Sixth Circuit) in passing on the points raised, says it is clear under the Michigan decisions that while the property was in the possession of the trustee the vendor might have brought a reclamation proceeding and would therefore have been entitled to take back the property, subject, no doubt to the duty to repay so much of the purchase price received as had not been counterbalanced by depreciation of the property. No such reclamation proceedings were brought and the entire property, including the chairs, was sold, as if free from liens. At the creditors meeting, when the sale came up for confirmation, the company protested the sale of the chairs on account of its interest therein, but the referee gave it to understand that the sale had brought enough to pay in full all liens, and the objection was withdrawn and the sale confirmed. The company then filed its petition asking that the trustee deliver the chairs or pay the amount representing its interest in the fund received by the trustee from the sale of the chairs. In covering this point the court says that it appeared that the company had an interest in the chairs; that the amount of the interest had been agreed upon; that the trustee, after using the chairs for a time sold them and has the money; and, in view of a stipulation, between the parties that the amount of the claim, if allowed, should be $4,856, no question is open as to whether he received for the chairs enough to cover the agreed amount. Under these circumstances, the contention of the trustee that the company is being permitted to enforce its illegal contract cannot be sustained. Wilkin v. Heywood-Wakefield Co., 7 F. (2d) 115. Walter I. McKenzie, of Detroit, for appellant. John McNeil Burns, of Detroit, for appellee.

The above decision is an affirmance of the holding of the United States District Court for Michigan, reported in 2 F. (2d) 376 and digested in The Corporation Journal, No. 135, March, 1925, page 268.

Nebraska.

Ouster of foreign corporation. This action is brought by the Attorney General of Nebraska to oust a foreign corporation from doing business in the state being based upon the theory that the corporation was organized for the purpose of defrauding those who might become stockholders; that it had procured a license to sell its stock by false statements concerning its assets and the extent of its business; that it had violated the laws of the state by paying dividends which had not been earned; that it was doing a small and unprofitable business for the purpose of keeping its charter alive, but in reality had ceased to perform the functions for which it was organized; that the capital stock and assets had been depleted by the payment of purported divi-

dends and were being further depleted by the payment of exorbitant salaries and expenses in conducting the business. The Supreme Court of Nebraska in allowing the ouster says that when a foreign corporation licensed to do business in Nebraska violates the law or fixed policy of the state it may be ousted therefrom in an action of quo warranto brought by the attorney general. The rule is settled that a foreign corporation does business in a state as a matter of comity and not as a matter of right. The court however, says that in such an action to oust the corporation the court has no power to wind up the affairs of the corporation or to decree a distribution of its assets in the state among its stockholders, when the testimony fails to disclose that there are creditors of the corporation. In such an action a stockholder as such is not to be considered a creditor of the corporation. State ex rel. Spillman, Atty. Gen., v. Brictson Mfg. Co., 205 N. W. 246. Weaver & Giller, of Omaha, and M. E. Culhane, of Minneapolis, Minn., for appellant. O. S. Spillman, Atty. Gen., and T. J. McGuire, Asst. Atty. Gen., for appellee.

New York.

Maintenance of principal office by foreign corporation raises presumption it is "doing business" in the state. This action is brought by Foreman & Clark Mfg. Co., Inc., a foreign corporation and involves a lease which recites that it was made between Elizabeth M. Bartle and "Foreman & Clark Mfg. Co., a corporation organized and existing under and by virtue of the laws of the state of Delaware, having its principal office at No. 85 Fifth Avenue in the City of New York, county and state of New York." The New York Supreme Court (Trial Term, Albany County) says that "principal office" is synonymous with "principal place of business," and that a corporation's principal office is the place where the principal affairs, business and otherwise, of the company are transacted. If, then, the principal office, that is the principal place of business, was in New York City, when the lease was made, it must be presumed, in the absence of evidence to the contrary, that it was "doing business" in the state at the time. The court further says that it appears that the corporation was "doing business" in the state; that the contract was a New York state contract; that it was made as an incident to the business of the corporation, and was to be performed in the state; and that at the time of the making of the contract the company had not qualified under the foreign corporation law. The court also says that it is not sufficient to procure a certificate prior to the commencement of the action. Foreman & Clark Mfg. Co., Inc., v. Bartle, 211 N. Y. Supp. 602. Tobin, Wiswall, Walton & Wood, of Albany, for plaintiff. Frederick C. Claessens, of Troy (Louis J. Rezzemini and Woolard & Cogan, all of Albany, of counsel), for defendant.

Tennessee.

Foreign corporation may sue in ejectment without qualification. A foreign corporation may bring an action in ejectment concerning lands situate within the state which it claims to own without complying with the foreign corporation laws of the state. The Supreme Court of Tennessee in holding as above further says that the mere purchase of

property by a foreign corporation without registration of its charter is not unlawful and that such purchase is valid against everyone save the state. The court also cites the case of Amusement Co. v. Albert, 161 S. W. 488, to the effect that a foreign corporation is "doing business" in the state, within the meaning of the foreign corporation laws, when it transacts therein some substantial part of its ordinary business, continuous in character as distinguished from merely casual or occasional transactions. Also whether or not the corporation is transacting business as above defined, is primarily a question of fact. Bouldin et al. v. Taylor et al. A. D. Clark & Co. v. Taylor, 275 S. W. 340. Jeff Fults, of Tracy City, for Cordelia A. Taylor. C. H. Garner and W. C. Abernathy, both of Tracy City, for M. E. Bouldin and A. D. Clark & Co.

Taxation

Michigan.

Situs of stock of domestic corporation owned by foreign corporation held to be at domicile of owner and excluded from consideration in computing privilege tax. This action involves the validity of a privilege or excise tax exacted by the secretary of state from the Pantlind Hotel Company, a Delaware corporation, carrying on its business activities in Michigan. The Pantlind Building Company, a Michigan corporation, owns the Pantlind Hotel building in the city of Grand Rapids. The Pantlind Hotel Company owns all the capital stock of the Pantlind Building Company and operates the Hotel Pantlind. The hotel company, a foreign corporation, conducts its entire business in Michigan, and all its officers and directors reside in the state. The hotel company claims the situs of the stock of the building company, owned by it, is in Delaware, and excluded by law from consideration in computing the tax. The secretary of state included such stock in computing the privilege tax, and his action was affirmed by the Tax Appeal Board. The hotel company has been duly admitted to transact business in the state and the tax in question is the annual fee of 3½ mills (now 2½ mills) upon each dollar of its paid up capital and surplus, owned and used in the state, for the privilege of exercising its franchise and of transacting its business within the state, imposed by Act 85, Public Acts 1921. The Supreme Court of Michigan in holding the situs of the stock in question to be in the state of Delaware and without the state of Michigan, and therefore could not be included in computing the privilege tax relies on the case of White Bros. Lumber Co. v. Corporation Tax Appeal Board, 222 Mich. 274. In connection with that case the court says: "There a Michigan corporation owned the stock of a British Columbia corporation and we held, under this same law, that such stock was personal property, and its situs, for the purpose of taxation, that of the domicile of the owner, the Michigan corporation. In the case at bar stock of a Michigan corporation is owned by a Delaware corporation, and, if we were right in our holding in the White Case, it decides this case." In re Pantlind Hotel Co., 205 N. W. 99. Butterfield, Keeney & Amberg, of Grand Rapids for plaintiff. Butzel, Levin & Winston, of Detroit, Mark Norris, of Grand Rapids, and W. F. Guthrie, of Youngstown, Ohio, amici curiae.

Montana.

Construction of term "engaged in business" in connection with imposition of license fees on foreign corporations. This action is brought by Cottonwood Coal Company, a Minnesota corporation, against the state treasurer and involves the construction of the statute imposing a license fee of one per centum upon the total net income received by foreign corporations in the preceding year from all sources within the state. Section 2 of the act provides a method of determining the total net income of foreign corporations engaged in business wholly within the state and section 3 provides a method applicable to corporations engaged partly in business within and partly without the state. The tax was figured under section 3, instead of under section 2, as contended by the corporation and resulted in a tax of approximately $300 more than if section 2 had been applied. It was contended on behalf of the state treasurer that the corporation was not engaged in business wholly within the state in view of the fact that an office was maintained in Minnesota where all meetings of stockholders and directors were held, plans and policies formulated and business directed. Also that money was sent for deposit in Minnesota banks and funds distributed in that state. The Supreme Court of Montana in holding that the corporation was not engaged partly within and partly without the state, says that necessarily a corporation must do certain acts with reference to its corporate activity at the state in which it is incorporated. Usually it must maintain an office, keep certain records, and hold annual meetings of its stockholders therein. Doing these things implies that it is carrying on business to some extent in such state, but by doing them it is not "engaged in business" there, within the purview of the statute, which uses the word "business" solely in connection with its gainful pursuit, and as a means of determining its net income as the basis of fixing a license fee. In the statute under consideration the activity of the corporation is not made the measure of the license fee, except as such activity manifests itself in the production of income. Cottonwood Coal Co. v. Junod, 236 Pac. 1080. L. A. Foot, Atty. Gen., and A. H. Angstman, Asst. Atty. Gen., for appellant. A. Parker Veazey, Jr., W. L. Clift, and R. H. Glover, all of Great Falls, for respondent.

North Dakota.

Foreign corporation not subject to tax upon corporate excess. The Supreme Court of North Dakota in a recent decision holds that foreign corporations which presumptively have been taxed from year to year upon their real and personal property within the state during the assessment period are not subject to taxation as upon corporate excess, under section 2110 of the Compiled Laws of North Dakota for 1913, as amended by Chapter 221 of the Laws of 1919 (Chapter 119 of Laws of 1921, and Chapter 305 of Laws of 1923) providing for the taxation of corporate excess of domestic corporations (or the value of the corporate stock, over and above the value of the real and personal property) upon the amount of capital employed within a given taxing district. Burleigh County v. Standard Oil Co. of Indiana. Same v. International Harvester Co. of America, 201 N. W. 510. E. S. Allen, State's Attorney, and F. O. Hellstrom, both of Bismarck, for appellant. O'Hare

& Cox, of Bismarck, and Conmy, Young & Burnett, of Fargo (C. W. Martyn and F. E. Packard, both of Chicago, Ill., of counsel), for respondent Standard Oil Co. Zuger & Tillotson, of Bismarck (E. R. Lewis, of Chicago, Ill., of counsel), for respondent International Harvester Co.

Oregon.

License tax on house to house salesmen held unconstitutional as interference with interstate commerce. The Real Silk Hosiery Mills, an Illinois corporation, sells its products throughout the United States to consumers only. It employs duly accredited salesmen who go from house to house soliciting and accepting orders. When a purchaser is found the solicitor fills out and signs in duplicate an "order blank," obligating the company to make delivery of specified goods and among other things requiring a deposit of a certain amount on each box listed. The goods are mailed parcel post c. o. d., direct to the purchaser from the post office branch at the mills and the balance is paid to the postman. The "order" states that the entire business is conducted in this manner and that full payment is not accepted in advance. The deposit is retained by the solicitor and constitutes his entire compensation. The question presented in the instant case involves the right of the City of Portland, Oregon to enforce an ordinance requiring persons who go from place to place taking orders for future delivery and receiving a deposit, to secure a license and file a bond. The Supreme Court of the United States in holding the ordinance unconstitutional says that considering former opinion of this court, we cannot doubt that the ordinance materially burdens interstate commerce and conflicts with the Commerce Clause. Real Silk Hosiery Mills v. City of Portland et al., 268 U. S. 325. John G. Milburn, of New York City, (Joseph W. Welsh, of New York City, Ralph Bamberger, of Indianapolis, Ind., and John M. Gearin, of Portland, on the brief), for appellant. Frank S. Grant, of Portland, (Robert A. Imlay, of Portland, on the brief), for appellees. David Paine, of New York City and James W. Bayard and Ralph B. Evans, both of Philadelphia, Pa., filed briefs as amici curiae, by special leave of the court.

Notes

A large export corporation, incorporated under the laws of Delaware, recently amended its certificate. Though the company is represented in Delaware by The Corporation Trust Company, the certificate of amendment was filed with the Secretary of State by the company's attorney direct. Our Wilmington office, however, always alert to note any matter affecting the interests of any corporation represented by us, observed that the amendment had been filed and immediately checked the records in the county in which the principal office is maintained to make sure that the statutory requirements for amendment had been complied with in all respects. The investigation indicated that the amendment had not been recorded in the county as required. The attention of the company's counsel was immediately called to the matter and proper steps quickly taken to comply with the law. The incident illustrates two points we have sought to make in the past: First, the faithfulness and alertness with which The Corporation Trust

Company watches over the interests of corporations for which it acts as statutory representative; and second, the wisdom of entrusting all corporation matters in Delaware, no matter how simple they may seem on the surface, to the long experience and expertness of this organization.

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394 corporations were organized under the laws of Delaware from October 20 to November 20, as against 374 reported in last month's Journal for the preceding 30-day period.

A New York City attorney had twice sent a certificate of incorporation for a New York company direct to the Secretary of State at Albany and both times it had been returned because of conflict of names. The last time was on October 30. His clients were greatly upset as corporate action had to be taken on a very important matter before November 1. Almost in despair the attorney turned to The Corporation Trust Company for help. This company had him submit a list of names acceptable to his clients, telephoned this list to our Albany Agent and the latter, being located only a few steps from the Secretary of State's office, was able to have the names passed on and an available one found while the telephone wire was held open. Within ten minutes of the time the list was submitted to our New York office the attorney had the information on which to act and his clients' interests were protected.

The Corporation Trust Company has been appointed Transfer Agent for Automatic Musical Instrument Company, Neptune Meter Company, Pandam Oil Company, and Kemozone Corporation.

Dinkler Hotels Company, Inc has been incorporated in Delaware for the acquisition of a number of hotels in important Southern cities. Carling L. Dinkler, who is interested in twenty-five Southern hotels, is president. In the newspaper accounts of the matter it is stated that the new company has acquired all outstanding shares, except directors' qualifying shares, of corporations operating three large hotels and is negotiating for a fourth. The incorporation papers were filed, and the company is to be represented in Delaware, by The Corporation Trust Company. Among other important incorporations handled for counsel by The Corporation Trust Company in the past few weeks are: The Denver & Salt Lake Railway Company, Delaware; Super-Power Corporation of Missouri, Delaware; Westinghouse Acceptance Corporation, Delaware; Warren Brothers Company of Argentina, Delaware; O. C. Duryea Corporation, Delaware.

A Detroit attorney was called upon a few days ago by clients in frantic haste to have a Florida corporation organized. The assistance of The Corporation Trust Company's Detroit office was enlisted and at 4:30 p. m. data for the organization were turned over to our representative. At 5 p. m. the next day counsel was able to notify his clients, greatly to their surprise and gratification, that their company had been incorporated in Florida, the incorporators meeting held, and all instructions carried out. While always surprising and pleasing to clients, such despatch on the part of The Corporation Trust Company has become a matter of course to those lawyers who have had experience with our services.

Some Important Matters for December and January

This calendar does not purport to cover general taxes or reports to other than state officials, nor those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

ALABAMA—Annual Fee for Permit to Do Business, due January 1—Foreign Corporations.

CALIFORNIA—Annual License Tax due between January 1 and first Monday of February—Domestic and Foreign Corporations.

Capital Stock Affidavit due between January 1 and first Monday of February.—Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

INDIANA—Annual Report due during January.—Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

Capital Stock Report, Real Estate and Holding Corporations, due between January 1 and February 15.—Domestic and Foreign Corporations.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1924 due on or before December 15.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign Corporations.

WISCONSIN—Income Tax due on or before January 31.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its business of assisting counsel in the incorporation, qualification and representation of corporations; of acting as Transfer Agent or Registrar of corporate securities, or as Trustee, Escrow Depositary, etc.; and of preparing and furnishing its various reporting Services, The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

What Constitutes Doing Business. A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business" by a foreign corporation in the sense of requiring qualification.

Safeguarding Stock Transfers. A newly revised edition of this pamphlet, dealing with the many pitfalls in transferring stock on a corporation's books, and the liability of the company's officers for making unauthorized transfers.

Delaware Corporations.—This handy pamphlet presents in most convenient form for quick reference a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non-par value stock, both common and preferred, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Paying Too Much in Taxes. Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary by not observing the proper procedure at the time transactions resulting in gain or loss are being negotiated.

When Doing Business Is Illegal. A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business, and the risks assumed by a corporation in transacting the latter class of business in a state other than that of its incorporation unless license is first obtained.

Certificate of Incorporation of Interstate Power Company. An unusually interesting example of how both common and preferred stock without par value may be handled under the Delaware law. Reprinted by special permission of counsel.

Talks on Foreign Corporations. A series of short articles on this always interesting subject, reprinted from The Corporation Journal.

Transfer Requirement Charts. A convenient card on which the principal requirements exacted by leading transfer agents for various classes of stock transfers are arranged in groups according to the type of name in which the stock stands. A useful guide for corporation officials charged with the heavy responsibility of making transfers on the company's books.

Lawyers' Preliminary Work Sheets. Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference and check up of papers. Furnished in pads of six sheets.

WHITE